86-992

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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In the Supreme Court
of the United States
October Term, 1985
No.

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John E. Reardon
8 Winding Way
Gibbsboro, N.J. 08026
(609) 783-6426

Petitioner,

vs.

Virginia Reardon; Vincent Segal, Esq.; Firm of Segal & Tropp; Richard Klein, Esq.; Firm of Melnick, Morgan, Klein & Cetti; Dr. Hopkins; Maffucci Realty; Ed Kelleher; Judge Page; Judge Mennetti; Judge DiMartino; Judge Wallace; N. J. Att. Gen. Mr. Kimmelman; Camden County Court System and the State of N.J.

Respondents.

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# Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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Affiliation with Nat
Denman's Justice PRO-SE.
Membership date of 1/86.

3 TPP

## QUESTIONS PRESENTED FOR REVIEW

1) Is a **R12-(B) (6)** dismissal proper when: The Courts have applied the standard for a lawyer to a PRO-SE, relied on material outside the pleadings, failed to provide any discovery in a complex case, there was indication by the District Court it lacked personal or subject matter jurisdiction and there were triable issues involved?

2) Does a State Court judge lose immunity when: There was Case Law and Statute which prohibited a judge from considering a particular order that was before him, there was Case Law which required the judge to recuse himself from the case which he was aware of and refused to abide by, the state judge admitted not having jurisdiction over certain matters and then heard them anyway, and there was a constitutional argument presented which would have removed personal jurisdiction from the judge?

3) Is the assignment of a malicious judge, by the assignment judge of a County Court, and refussal to remove said judge when it was his duty as per the rules of Court and State Constitution a judicial function which grants immunity or an administrative function which would make him liable?

4) Does a judge lend his authority when: He aids in the "rigging" of a trial or admits he can not hear matters unless they are properly before him and then hears them anyway and always grants the defendants requests?

5) Does a private litigant act under color of law when: There is statute which creates a nexus between the state and private party who seeks relief thereunder or when a private party acts in concert with another private party who is?

6) Does a Court Order have the same effect on a court appointed official as case law and/or statute has on a judge as to the right or loss of immunity?

7) Does the consolidation of three separate complex litigation cases with different issues, simply to allow a court to dismiss all cases at once, create the type of prejudice that would require a reversal of the cases?

8) Can **R12-(B) (6)** be used as means of settling a dispute?

9) Is the dismissal of any case, for any reason, valid when the District Court judge has demonstrated the type of behavior that violates **28 U.S.C. 455** and thus affects due process?

Note: While the above set of questions appear to be different than the originals, they are not. They have been re-arranged and consolidated. This then also affects the apperance of the arguments because they have been re-arranged to fall under the new question headings.

Also, the Petitioner does not have the time or money right now to reproduce all of the Appendices and has therefore only duplicated the Appeals Court Order to now be Appendix A.

## TABLE OF CONTENTS


| | Item | Page |
|---|---|---|
| 1) | Questions Presented | 1, 2 |
| 2) | Table of Contents | 3 |
| 3) | Rules, Citings, & Statutes | 4, 5, 6 |
| 4) | Opinion Below | 7 |
| 5) | Jurisdictional Statement | 7 |
| 6) | Constitutional Provision | 7 |
| 7) | Statement of the Case | 7 |
| 8) | Writ of Certiorari | 8 |
| 9) | Facts Leading to Appeal & Writ | 8 |
| 10) | Reasons for Granting Writ | 12 |
| 11) | Arguments Supporting Writ | 13 |
| 12) | Conclusions | 29 |
| 13) | Appendix A | 30 |

## RULES, CITINGS AND STATUTES

| | Rules | Pages |
|---|---|---|
| 1) | R12 | 1, 2, 7, 9, 10, 11, 13, 14, 16, 17, 22, 23 24, 25, 26, 27, 29 |
| 2) | R4 | 11 |

**Statutes**

| | | |
|---|---|---|
| 3) | 28 U.S.C. 1254 | 7 |
| 4) | 28 U.S.C. 1331 | 7 |
| 5) | 28 U.S.C. 1343 | 7 |
| 6) | 28 U.S.C. 455 | 2, 10, & 27 |
| 7) | 42 U.S.C. 1983 | 7, 17, 19, 22, 23, & 24 |
| 8) | 42 U.S.C. 1985 | 7 |
| 9) | N.J.S.A. 9:2-9 & 9:2-10 | 17 |

**Citings**

| | | |
|---|---|---|
| 10) | 6th Amendment, U.S. Con. | 19 & 20 |
| 11) | 14th Amendment, U.S. Con. | 7, 19 & 20 |
| 12) | U.S. vs. Rammey, 336 F.2D 512, Cert. Den. 85 S.Ct. 649 | 13 |
| 13) | 92 F.R.D. @ 410 (3rd Cir.) | 14 |
| 14) | Complex Litigation, 90 F.R.D 207 | 9, 14, 15, 26 & 27 |
| 15) | Zenith Radio vs. Matsushita Electronic, 478 F. Supp. 7,494 F. Supp. 1161 | 13 & 16 |
| 16) | Stern vs. U.S. Gypsum, 547F.2D 1329, Cert. Den. 98 S.Ct. 533 | 10, 23, & 27 |

| | | |
|---|---|---|
| 17) | Bryson vs. Brand, 621 F.2D 561 | 13, 18 & 20 |
| 18) | Rankin vs. Howard, 633 F.2D 844, Cert. Den. 101 S.Ct. 2020 | 13, 18 & 20 |
| 19) | 716 F.2D 1109, Cert. Den. 53 Lw 3240 | 9, 13 & 26 |
| 20) | Dykes vs. Hoseman, 743 F.2D 1488 | 13, 26 & 27 |
| 21) | Texaco vs. Penzoil, 784 F.2D 1133 (1986) | 9, 12, 13, 23 & 25 |
| 22) | Re: Grossmeyer, 20 S.Ct. 535 | 9 |
| 23) | Application of Gault, 875. Ct. 1428 | 13 & 17 |
| 24) | Stump vs. Sparkman, 98 S.Ct. 1099 | 10, 12, 17, 18, 19, 20, 21 & 24 |
| 25) | Butz vs. Economou, 98 S.Ct. 2894 | 13 & 20 |
| 26) | Boag vs. McDougal, 102 S.Ct. 700 | 13 |
| 27) | Lugar vs. Edmondson Oil, 102 S.Ct. 2744 | 13, 17 & 22 |
| 28) | Smith vs. Wade 51 Lw 4407 | 9, 11 & 13 |
| 29) | 51 Lw 5030 | 24 |
| 30) | Palmore vs. Sidoti, 52 Lw 3304 Sum. 52 Lw @ 4841 | 10 & 13 |
| 31) | Goodwin vs. Cir. Court of St. Louis Co., 53 Lw 3079, Cert. Den. 53 L2 3237 | 10, 13 & 21 |
| 32) | St. vs. Sherwin, 127 N.J. Super. 370, Pet. Den. 95 S.Ct. 9 | 15 & 22 |
| 33) | St. vs. Seaman, 114 N.J. Super. 19, Cert. Den. 92 S.Ct. 674 | 23 |
| 34) | St. vs. Louf, 126 N.J. Super. 321, Aff. 64 N. J. 172 | 23 |
| 35) | Re: Rosenberg, 64 Va. L. R. 844 | 20 & 22 |
| 36) | Haefner vs. Co. of Lancaster, PA, Et Als, 543 F.2D 264 | 16 & 25 |
| 37) | U.S. vs. Mimms, 541 F.2D 415 | 27 |
| 38) | U.S. vs. Poludniak, 657 F.2D 948, Cert. Den. 102 S.Ct. 1431 | 27 |
| 39) | E.T. vs. L.P. 185 N.J. Super. 77 | 17 |

40) Pogue vs. Pogue, 147 N.J. Super
@, 64 18
41) Beck vs. Beck, 85 N.J. 460, 173
N.J. Super. ? 18 & 21
42) Dennis vs. Sparks, 101 S.Ct.
183 26

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**Opinion Below**

The Court of Appeals entered a judgement order affirming the District Court decision dismissing the above captioned matter under **R12-(B) (6).** (A copy is enclosed as Appendix A.)

**Jurisdiction**

On February 19, 1986 the Third Circuit entered its final judgement order in the above captioned matter. (Appendix A) Therefore, the jurisdiction of this Court comes by way of **28 U.S.C. 1254.**

**Constitutional Provision Involved . . .**

United States Constitution, Amendment XIV:

No state shall deprive any individual of any life, liberty or property without "Due Process" nor shall it deprive any individual of the equal protection of its laws . . .

**Statement of the Case**

On February 19, 1986 the Third Circuit Court of Appeals affirmed the District Court dismissal of the above captioned case as per R12-(B) (6) and thus held the Petitioners appeal to be totally meritless and frivolous by its judgement order. The complaints stemmed from three separate law suits under **The 14th Amendment of the U.S. Constitution, 42 U.S.C. 1983, 42 U.S.C. 1985, 28 U.S.C. 1331 and 28 U.S.C. 1343.** The

complaints alleged concerted actions to violate constitutional rights in violation of due process and to deprive the Petitioner of the equal protection of the state laws of New Jersey regarding the custody of children.

Despite extensive briefs supported by the Supreme Court decisions, Appeals Court decisions denied by the Supreme Court of the U.S., The Third Circuits decisions in other cases, other Appeals Court decisions, State Appelate and Supreme Court decisions regarding certain criteria and standards to determine discriminatory intent and state decisions denied by the U.S. Supreme regarding conspiracy and proof and reasonable assumptions thereof, the Appelate Court and District Court has virtually allowed every legal standard under the laws to be violated and stand. This includes this Courts decision regarding the loss of immunity of judges in certain cases which is and what has been argued to be present here.

## Petition for Writ of Certiorari to the U.S. Court of Appeals for the Third Circuit

The Petitioner, John E. Reardon, respectfully prays that a Writ of Certiorari issue to review the judgement of the United States Court of Appeals for the Third Circuit entered on February 19, 1986.

### Statement of the Facts Leading to the Appeals

1) In July 1984 the 84-3444 Case was filed in Philadelphia.
2) Around October 1984 the complaint was transfered to Camden and docketed as Case 84-3696.
3) The complaint requested injunctive relief which said request was never addressed or heard by the Court.
4) In November 1984 the pre-trial conference proceeded – without Petitioners prior knowledge – toward a dismissal of the Case.
5) The Petitioner moved to remove his attorney and seek leave to familiarize himself with the Case, the laws, etc.
6) The judge ruled on January 22, 1984 and denied the Petitioners request in #5.

7) As per the Case of **"Complex Litigation", 90 F.R.D. 207,** the Court, the Magistrate and the Clerks Office failed to re-schedule another conference to determine how discovery would proceed now that the Petitioner had come into the Case and was PRO-SE.

8) In December 1984, after confrontations with the State Courts regarding their jurisdiction to sit and hear matters under the circumstances and for other reasons, the Petitioner then filed the 84-5203 Case which was separate since the original complaint involved a final order by the state which was forclosed on appeal to the state by denial. **(See Tex. vs. Penzoil, 784F.2D1133, 1147)**

9) When the defendants and the State Court Judges still refused to stop their actions and continued to proceed with the full knowledge of the consequences of their improper and illegal activity, the Petitioner filed the 85-0097 Complaint. **(See Smith vs. Wade, 51 Lw 4407, 408-4412)**

10) The defendant Reardon never filed or had a legally valid answer on file until February 8, 1985, one week after the judge had closed the record to the Petitioner.

11) Only one defendant in the 84-5203 Case had filed an answer by February 1, 1985 with the state seeking leave to file and vacate default on February 1, 1985 which was granted by the judge.

12) All other defendants had either failed to answer the complaint or failed to appear to defend themselves. **(See 716 F.2D 1109, 1112, Cert. Den. 53 Lw 3240, and Re: Grossmeyer, 20 S.Ct. 535.)**

13) There were no answers on file for the 85-0097 complaint by any defendant on February 1, 1985.

14) There was a valid and legal default entered against all but one private defendant in the 84-5203 complaint with the one answering defendant demanding trial by jury.

15) The judge on February 1, 1985 made a suasponte motion to consolidate and dismiss **under R12-(B) (6)** without advanced notice or any notice to the private defendants and at a time when the PRO-SE Petitioner was not adequately prepared to defend such a motion.

16) The motion to consolidate is prejudicial since it was done only for the reason to allow the judge to address the separate

actions as one and then dismiss the complaints to protect the defendants, and thus he acted as a proponent. (If Certiorari is granted the court record will prove this.)

17) That there were numerous motions and papers submitted on February 1, 1985 and relied on by the Petitioner and the judge which made the **R12-(B) (6)** dismissal automatically summary judgement with no advanced notice. **(See Bryson vs. Brand, 621F.2D 556 which was cited by the District Court Judge.)**

18) The Petitioner argued the case laws regarding the loss of a judges immunity by way of **Stump @ 1105 and 1106 before the District Court and the loss for administrative functions as per Goodwin vs. Cir. Court of St. Louis Co., 53 Lw 3856, Cert. Den. 53 Lw 3237.**

19) Petitioner also argued before the Court of Appeals State Case Law which supports discrimination by the actions of the defendant Page and the Equal Protection Argument regarding the setting of custody under the "Best Interest" standard as per **Palmore vs. Sidotti, 52 Lw 3558.**

20) The Lower Courts have let the issue of lending authority to private litigants by enforcing officials go un-addressed.

21) The Courts have dismissed three complex litigation cases without any discovery.

22) The Courts, in light of the standard for PRO-SE's, could not possibly meet the criteria that it must be absolutely certain that no set of facts or theory could be presented by the PRO-SE Plaintiff to grant the relief requested especially when there is material in control of the defendants. **(I.E. an undisclosed savings account which could have lead to the reasonable inference that bribes were made.)**

23) The District Court Judge has demonstrated the type of prejudice and actions which would hold him accountable for recusal under **28 U.S.C. 455** and which thus deprived the Petitioner of a fair and impartial tribunal and hearing.

24) The Courts have refused to allow technical defects it feels exists to be corrected by the Petitioner. **(See Stern vs. U.S. Gypsum, 547F.2D 1329, 1334, Cert. Den. 985. Ct. 533)**

25) The District Court has used **R12-(B) (6)** as a means to force the PRO-SE Petitioner to prove his case in order to maintain the action which is in violation of the standard that a PRO-SE's

statements must be taken as true and, in light of the fact that all of the necessary allegations having been made in the complaint, is prejudicial.

26) The Lower Courts have allowed the defendant Attorney General, who failed to adequately and properly carry out his duties to ensure the laws in the state were enforced to be removed as a defendant for liability in contradiction to **Smith vs. Wade, 51 Lw 4407, 4408-4412.**

27) The judge never granted the Petitioner a Pleanary and Evidentiary Hearing as required by **R12-(D)** and as spelled out by the Advisory Committee in the interpretation of R4 at Commentary C4-39 at page 53. (This should be taken into consideration with #'s 12 and 22 above.)

28) That reasonable inferences were refused to be drawn by the Courts such as the fact that the defendants all knew of the law suits and hostility of the Defendant Judge Mennetti and continued to bring matters before him both without reasonable notice or without any notice at all to the Petitioner as well as matters that were not even before the judge and the relief would always be granted and this would lead to the reasonable conclusion that there were either concerted action or the judge had decided to lend his authority to the defendants due to the Petitioners actions.

29) Despite repeated warnings to the Lower Courts of the activities of the defendants that the Petitioner would have to file for bankruptcy in order to try and save some semblance of solvency, the Courts refused to so act to prevent said injury, the Bankruptcy Petition was filed and the Court took everything away from the Petitioner including that portion of his property that was supposed to be exempt.

30) #29 was carried out and accomplished by fraud and perjured affidavits and the Court refused to address this activity.

31) The State Court Judge – Defendant – Mennetti was served the bankruptcy petition to stay a State Court proceeding and he ripped it up and threw it in the trash and told the Petitioner "I will see you at 1:30!"

32) Because the Petitioner was threatened with contempt by the Defendent Judge on Sept. 14, 1984 when he was without counsel and in light of the way the statement was made to the Petitioner in #31 above, the Petitioner feared for his safety and did not go to

the Hearing that afternoon. (3/12/85)

33) The Bankruptcy Court refused to deal with the actions of the judge and ignored the issue all together.

34) The judge granted all relief that day to the private defendants, including a wage execution and monies which were known to be forclosed on by the judge, attorney fees that were known to be double billed and monies forclosed on by the Court of Appeals.

35) The above activities were typical of the type carried out by the defendants at all stages and reported to the Lower Courts repeatedly. **(See Tex. vs. Penzoil, 784 F.2D 1133, 1147 for #'s 29-34 above.)**

36) The Lower Courts have knowingly allowed every legal standard to be violated and ignored in this case and placed irreperable injury onto the Petitioner which amounts to the type of futile appeals and due process violations held to be addressable and reversable by the Courts in **Texaco vs. Penzoil, 784 F.2D 1133,** and the Courts should reverse because of the futility of such efforts to appeal from the activities the Petitioner could not have properly addressed because of the continuing nature of the activities which would have prevented any reasonable Court from knowing in fact that it could conclude there is no set of facts or proof that could be proven to grant the relief requested.

**Reasons for Granting the Writ**

The Courts have so far departed from the usual course of judicial proceedings in dealing with PRO-SE matters that this Court should review the petition. The departures are based on the fundamental rights of Due Process of any hearing when a judge has been prejudiced, biased and totally unrelenting toward a PRO-SE individual to affect his right to a fair and impartial hearing and tribunal which would allow a reversal of any order on that ground alone. That the Lower Courts have also departed from the scheme of things by forcing the Petitioner to make a futile effort to appeal and maintain an ability to appeal due to the activities of the defendants and the Courts refusal to properly address these activities as provided by the **Texaco vs. Penzoil Case @1147.** The Lower Courts have also failed to abide by and address first time issues and arguments before their Courts and supported by this Courts decisions in **Stump vs. Sparkman**

**1105 & 1106, Rankin vs. Howard, 633 F.2D 844, Cert. Den. 101 S.Ct. 2020, Dykes vs. Hoseman, 743 F.2D 1488, Goodwin vs. Cir. Court of St. Louis Co., 53 Lw 3075, Cert. Den. 53 Lw 3237, Applications of Gault, 875. Ct. 1428, Smith vs. Wade 51 Lw 4407, Butz vs. Enconomou, 98 S.Ct. 2894, 2910, Plamore vs. Sidoti, 52 Lw 3304, 716 F.2D, 1109, 1112, Boag vs. McDougal, 102 S.Ct. 700, Lugar vs. Edmondson Oil, 102 S.Ct. 2744, 2748, Texaco vs. Penzoil, 784 F.2D 1133, 336 F.2D 512 Cert. Den. 85 S.Ct. 649 and numerous other standards to great to list.**

**Arguments**

1) ***Standard of a Lawyer vs. PRO-SE:*** The District Court has established that the PRO-SE Petitioner should be treated as a lawyer rather than a PRO-SE individual. A **R12-(B) (6)** dismissal requires not only that all statements be taken as true, but it must be certain beyond a doubt that no set of facts or theory could be presented to grant the relief requested – **Boag vs. McDougal, 102 S.Ct. 700, 336 F.2D 512, Cert. Den. 85 S.Ct. 643.** Even if the judge carried out the requirement of taking all facts as true, he did not nor could not have carried out the latter two parts of the criteria for this PRO-SE due to the extreme complexity of the cases and the failure to provide discovery to material which is in total control of the defendants. This failure would be consistant with the reversal of the case of **Zenith Radio vs. Matsushita Elec., 478 F. Supp. 7,494 F. Supp. 1161. (3rd Cir. 1980)** The Appeals Court has also left unaddressed the very question that this Court has left unanswered because it has never been called upon to so do regarding the connection between jurisdiction and failure to state a claim upon which relief may be granted. This question is extremely relevant here because the District Court Judge had indicated in his opinion that he either lacked subject matter and/or personal jurisdiction. Thus, since a **R12-(B) (6)** dismissal is one on the merits and a jurisdictional dismissal is not, the Court should review this issue to lay to rest when a dismissal is proper under either and how to distinguish when to use which method of dismissal.

***Summary Judgement:*** The case law standard and rules of Court specifically state that when a judge relies on material outside the pleadings for a **R12-(B) (6)** dismissal it automatically

becomes one of summary judgement and advanced notice must be given and that if there is a material fact in dispute summary judgement may not be granted. The District Court Judge has done just that and the Court of Appeals has refused to apply the law as is required. The Third Circuit has defined at **92 F.R.D. @ 410** that *pleadings, affidavits and exhibits* are all separate items for review. the standard under **R12-(B) (6)** is that there can only be a reliance on the pleadings which is the complaint and answers prior to the closings of the record. Here the record was not only closed by the lapse of twenty days but was also closed by the default that was entered against all of the defendants, but one, and the state moved to re-open the record by requesting the default be set aside and they be permitted to file late answers which the judge so did and relied on the new material that was accepted outside the pleadings as per general **R12-(C).** The judge also relied on the Petitioners exhibits and did so prejudicially rather than favorably as he was required by law to do. It is clear, the law states that no material, no matter how it is presented to the Court, may be relied on to dismiss a case under **R12-(B) (6)** or it is summary judgement.

***Failure to Provide Discovery:*** The case of **"Complex Litigation", 90 F.R.D. 207** states that normally one is not automatically entitled to discovery as a rule, however, in complex cases – due to the diversity of issue, number of defendants and requirements that pleadings be short – the complex case becomes the exception and not the rule. It further states that the need for discovery in complex cases is so that the issues may be resolved with clarity, all of the facts may be presented, all of the defendants may be uncovered and what facts relate to what defendants and what issues. It also was the exception due to the fact that there is always going to be material in control of the defendants which could be obtained in no other method. The Lower Courts have ignored this standard and permitted the dismissal of three complex cases without any discovery whatsoever and would also be in violation of the criteria for PRO-SE individuals which requires that it must be absolutely certain that no set of facts may be presented to grant the relief requested and for which this could not be carried out especially in light of the fact that there was an undisclosed savings account in the control of the defendant

Reardon that at least the defendants Segal, Page and Reardon prevented any disclosure of the account due to the possibility that it may have shown willfull fraud and/or that there were bribes payed to the Defendant Judges. The bribes could have been reasonably infered in accordance with the case of **State vs. Sherwin, 127 N.J. Super. 370, Pet. Diss. 95 S.Ct. 9.** However, with the extreme passage of time, even this avenue may now have been forclosed on to the Petitioner due to the dismissal of the cases and refusal to reverse and thus the irreparable harm that has now resulted. It is even further error to have dismissed without discovery in light of the fact that the Clerks Office, the Court and the Magistrates Office have failed to carry out their duties in accordance with the **"Complex Litigation"** case and then the systems error as well as the PRO-SE's errors were laid upon the PRO-SE party by dismissing the case and then refusing to grant him relief of any type even when all of the errors were not his nor created by him. Is the system free to do anything it wishes any time it wishes without any means of addressing its errors and the prejudice and injury it creates?

The above is even more curious in light of the fact that the District Court Judge stated three times on February 1, 1985 that discovery would take place, the Petitioner went to the pre-trial conference on February 22, 1985, none of the defendants showed up despite having had sixty days advanced notice and their excuse – which was accepted by the District Court and Court of Appeals – was they were not given sufficient notice. If this is not sufficient notice and is accepted by the Courts, how can two hours notice to a PRO-SE be sufficient notice to affect his interest in certain property rights? Also, what about sanctions for having failed to appear at the conference unless the defendants knew ahead of time not to show up or it would screw them and the judge up to have the case dismissed. But how could they have known that ahead of time? It would also be interesting to note that the rules of Court are specific in that if the record is closed, a defaulting party must seek leave to file a late answer and not simply file it with the Court blindly accepting it and then mooting all pending motions by the Petitioner. Where is the equity, justice and fairness in such an action by a judge. Doesn't the Federal Courts have to grant and uphold **"Due Process"** as well? Doesn't the violation of

**"Due Process"** by any Court permit the reversal of a Courts order through equity relief? Or does an individual have to file a Federal Tort Law Suit against a judge in order to obtain said equity relief?

***Jurisdiction vs. R12-(B) (6):*** The Third Circuit Court of Appeals attempted to address the issue of when a case should be dismissed for lack of jurisdiction versus failing to state a claim upon which relief may be granted. **(Zenith vs. Matsushita)** It relied on this Courts decision and even noted that this Court had not thoroughly addressed this issue either. It now becomes apparent that this issue should be finally laid to rest by this court especially in light of the fact that the District Court Judge, throughout the repleat of his opinion, had continually infered that he either lacked subject matter and/or personal jurisdiction over the case and defendants. This is an extremely important issue here because the District Court Judge has ruled, in his Sua-sponte Motion to consolidate, that because the plaintiff had filed new law suits they were claimed to contain the same common law issues, because they stemmed from a divorce decree. The continued actions of the defendants regarding the loss of the Petitioners house, a wage execution, etc., would be thrown out by this judge for the same reason. Even though the case law standard says otherwise. But, this is precisely the problem, the Courts have refused to allow this PRO-SE Petitioner to have the laws applied to any matter he brings. While the federal issues may be the same, i.e., loss of property in violation of Due Process, the particular issue of the property right that is lost is different. What the Lower Courts have permitted to stand as a standard is that if some set of defendants are found innocent of having alleged to have deprived an individual of a right and interest in his house, that the individual is now foreclosed from suing the same defendants for having deprived him of the love and affection of his children, or having interfered with his religious freedom or having deprived him of other monies they knew were not reachable in court proceeding due to the fact they occured after the original final order was entered and foreclosed on by a rejection of an appeal to the Higher Courts in the state. This then makes the later continued activity to be totally separate from the original law suit. The Courts ruled in **Haefner vs. Co. of Lancaster, PA, Et**

**Als, 543 F.2D 264** that Res Judicata only works if the issues are the same. What the District Court Judge has focused the issue to be is the divorce/custody decree and thus anything from it, even though the original order is final, is foreclosed on by Res Judicata and his ruling on the case.

***Triable Issues:*** According to **Dykes vs. Hoseman, 743 F.2D 1488, 1499,** the issue of conspiracy is a triable issue and that the mere stating of conspiracy states a **Sec. 1983 Action. (ID. @1494)** What has taken place is that the District Court has used **R12-(B) (6)** to require the Petitioner to prove his claim before he may be permitted to maintain it. The failure of the judge to provide discovery to an undisclosed savings account and the reasonable inferences that the jury could have thus drawn could have corrected the problems the Court has complained of while it prevented the Petitioner from coming up with the proof it felt was necessary to maintain the action. Even aside from the proof, the Courts claimed was necessary, the standard of **Lugar vs. Edmondson Oil, 1025, Ct. 2744, 2748,** was clearly shown to the Court of Appeals and how the divorce/custody trial was rigged. And how each person, including the judge, participated in so doing and the Lower Courts ignored these facts and case law criteria, the proper parties to decide the question of whether there was a conspiracy or whether the judge(s) had lent their authority in any way or whether notice was proper – in accordance with the **Applications of Gault** – was the jury and not the judge by his Sua-sponte Motion to dismiss under **R12-(B) (6)** there is enough in the record with the applicable case law standards, to demonstrate the District Court Judge has set himself at odds with this PRO-SE and he has made it clear he will not come out on top in any matter he brings to him and this continues even to today.

2) **Loss of Jurisdiction by Case Law and Statute:** This Court held in **Stump vs. Sparkman @1105, 1106,** that if there were case law or statute which prohibited a judge from "considering" an order that the judge would lose immunity. Here the Petitioner pointed out that by way of **N.J. Statute 9:2-9 & 9:2-10 and by way of the case of E. T. vs. L. P., 185 N.J. Super. 77,** that the judge was prohibited from entering any order until said time that the moving party could prove the state had "jurisdiction" to act on their request. It was also pointed out that

in the case of **Pogue vs. Pogue, 147 N.J. Super. @64,** that unless the matter pertained to the welfare of the child, i.e. the child was in imminent danger, **"It was beyond the reach of the law".**

Coupling this with the criteria and the burden of proof required to be met by the defendant Mrs. Reardon by the above and the case of **Beck vs. Beck** the defendant could not meet such proof on her affidavit and a non-credible report from a psychologist. The Defendant Judge knew the report to be that of a non-credible expert as well as the fact of who the proofs were required to be born by and what they were and he granted the petition in spite of all of the criteria and knowledge and case law which he knew prevented him from so doing. Here it is not a question of whether custody matters are something he normally heres, as this was the wrong issue to be focused on. The issue was the November 9, 1983 order which preceeded the custody hearing and thus effected the Petitioners interest thereto by way of the improper and illegal order of November 9, 1983. Once a judge loses jurisdiction for a proper actions, he loses it on all future actions. **(Rankin vs. Howard)** the petition of November 9, 1983 was not a routine petition the Courts have a blanketed right over as noted by the fact the state enacted legislation to ensure this and the Courts upheld the restricted jurisdiction of the Lower Courts to so hear them. This is precisely what this Court has said and the **"Rankin"** Court interpreted. Once jurisdiction is lost, all normal judicial functions cease to be judicial and thus the actor acts on his own volition without the authority of the state. Thus the Courts have and continue to ignore the jurisdictional question but instead continue to focus on the functions themselves to protect the defendants for some unknown, for sure, reason.

***Case Law Regarding Recussal:*** Again, with the **Stump** criteria in mind, does a judge become liable for his conduct when there is state case law which requires him to recuse himself from a case, it is pointed out to him and he refuses to remove himself. Here, the question is not whether the judge has the right to decide whether he must recuse himself, as the case law that was cited to the judge specifically stated that when a judge's credibility is verbally attacked – as the Petitioner did in the law suits – the judge has the obligation to remove himself. It further interpreted the

**N.J. Rules of Court** as saying the judge must so recuse himself even when the counsel or parties believes he may be prejudiced in some way. This then removes the judges clear, supposed, right to decide if he should recuse himself or not. According to federal case law standard, case omitted, a judges recusal removes his right to decide any issue in the matter that was previously before him. This then seems to me to be the very type of argument that this Court implied in the **Stump Case** regarding loss of immunity and loss of jurisdiction.

***Admitted Lack of Jurisdiction:*** The next question that arises is whether, unknown to a plaintiff, a judge who states on the record that he does not have jurisdiction to hear and decide issues that are not properly before him would then be liable. This is the type of action which would seem to fall under the standard of a judge who acts in the face of a valid case law or statute which removes the judges jurisdiction. The question is thus, if a judge admits he does not have jurisdiction to here matters that are not properly before him, does a moving party have to know what the case law is or the statute is once the judge admits it on the record. This also is and must be taken into consideration with the fact that the admitting judge, then did continually allow a co-worker he was on a cordial relationship with to bring any matter she wanted to him at any time she wanted with or without notice or adequate notice and he would always grant the relief requested even when he knew it had already been foreclosed on for one reason or another. This same judge also allowed the defendant Mr. Klein, the Petitioners former State Counsel, to walk into court with no matter before the judge and allowed the lawyer to remove himself from the case. Thus, does a judge who knowlingly acts against his jurisdictional authority by his own admittance become liable under **42 U.S.C. 1983?**

***Constitutional Loss of Jurisdiction:*** The Court of Appeals has left a constitutional first argument regarding the loss of immunity of judges based on the criteria of the **Stump @1105 & 1106** unaddressed. This argument deals with the loss of judicial immunity based on the existence of case law and the supreme law of the land, the U.S. Constitution under Articles VI and XIV, where it states . . . .

. . . .This Constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, "Shall be the Supreme Law of the Land; and the judges in every state shall be bound thereby." . . . .

Coupling this with the **Stump decision @1105 & 1106** where it states . . . .

. . . . In our view, it is more significant that there was no . . . statute and case law . . . prohibiting a Circuit Court, a Court of general jurisdiction, from "considering" a petition of the type presented to Judge Stump . . . .

Coupling this with **Butz vs. Economou, 98 S.Ct. 2894, 2910,** then we have a judge being bound by the Supreme Law of the Land which specifically prohibits a judge from granting relief to any litigant in violation of Due Process. The Supreme Law of the Land being Articles VI and XIV of the U.S. Constitution and for which the New Jersey Constitution binds the judge to the U.S. Constitution. Again, the standard set by this Court is clear to this Petitioner but is being left unresolved and unaddressed by the Lower Courts. Even the case re: **Rosenberg, 64 Va. L. R. 344** has relied on decisions by this Court and the English Courts which have implied that when a judge violates Due Process he lacks personal jurisdiction, and thus by way of **Rankin vs. Howard** he would seem to be liable for his actions. Thus it would seem that Due Process violations are not procedural errors but rather errors that go to violate the Supreme Law of the Land. Therefore, does this argument present a basis by which State Court Judges would lose jurisdiction and thus immunity for their actions when they knowingly or recklessly act to deprive a person of property, etc. in violation of Due Process?

3) ***Administrative vs. Judicial Functions:*** The Lower Courts have left unaddressed and unresolved the question of whether the assignment of a malicious judge and the refusal to remove said judge in contradiction to the Assignment Judges duties are judicial acts or administrative acts this Court held a

judge to be answerable for in accordance with **Goodwin vs. Cir. Court of St. Louis Co., 53 Lw 3079, Cert. Den. 53 Lw 3237.** The Petitioner relied on the N.J. Constitution to show that it was the Assignment Judges duty to remove such a judge when it is pointed out to him and he refused to fulfill his duties. The Petitioner also relied on rules of court and case law which would tend to indicate the appointment of a judge is an administrative function rather than a judicial function. Since this Court admitted in the **Stump Case** it has not had opportunity to determine what is a judicial rather than an administrative function and now the Lower Courts have passed on this issue as well. It is now left for this Court to lay to rest this issue once and for all.

4) **Does a judge lend his authority by aiding in the "rigging" of a case:** Here, while actions on the surface are subtle which would seem to be nothing at all, with an in depth analysis it will clearly show that the judge in fact assisted in rigging the Petitioners divorce/custody trial. This rigging took place by way of the fact that the State Court Judge knew all of the criteria in this particular case and that all proofs and burdens were on the defendant Mrs. Reardon. Aside from this is also the fact that the judge agreed we could have another judge hear the matter and when the Petitioner then had his attorney approach him on the matter, in light of the fact that the defendant Mrs. Reardon had worked with him in the past, he refused to transfer the matter back to the original residing judge. It should also be pointed out that the rules of court specifically state that once a case has been assigned to a judge that that judge is supposed to decide the disposition of the case.

The Petitioner would further point out that by the judges own admission he was totally familiar with the case of **Beck vs. Beck.** From that case comes the criteria the judge knowlingly and willfully acted on to violate. The case further points out the criteria of what a credible expert is and that he appointed and relied on two non-credible expert witnesses, his and Mrs. Reardon's, to decide the issue of custody. (i.e. the loss of the love and affection of the children and the destruction of a recognized family unit that had already been in existence for over 10 months.) This also comes in light of the fact that the judge also permitted the court appointed expert to violate his court order which affected

the fairness of the hearing. The judge also then permitted both Mrs. Reardon and the court expert to perjur themselves in court and even relied on said testimony. Therefore, in accordance with the **Lugar Decision @2748,** does a judge who manipulates the laws to aid a former co-worker lend his authority in such a way that the private party becomes liable under **42 U.S.C. 1983,** and does this also allow the reasonable inference there was concerted action on the part of the defendants. This is taken together with the fact that the attorneys knew these criteria as well and allowed not only these criteria to be violated but also explains why Mrs. Reardon did not call witnesses and why the Petitioners attorney refused to call witnesses despite threats to file ethics complaints if he did not. The attorneys knew that the judges job would be complicated and too obvious if he were to rely on the testimony of one side versus another. However, if it was only the experts and the Petitioner and Mrs. Reardon he could use the argument of demeanor to chose who he would believe and that is precisely what he did and was permitted to occur. It would seem to the Petitioner that when parties act in some way to manipulate the laws and criteria and they all perform some function that allows the manipulations to take place or act in some unobtrusive fashion to so manipulate, that a jury would have the right to reasonably infer, without direct evidence, that a conspiracy actually took place. **See State vs. Sherwin** thus if the above is correct, it would seem that the standard under **R12-(B) (6)** has not been met and the dismissal was improper.

***Does a judge lend his authority when he admits he can not hear matters unless they are properly before him, and so denies the Petitioner, but allows the defendants to so do:*** Here the question goes to ask when a judge repeatedly admits he may not hear a matter unless it is properly before him, if he then can be considered to have lent his authority to the private party, one of which he has a cordial working relationship with, by permitting the private party to allow, knowingly, this standard to be continually violated. Doesn't this type of action, which sets up the hearings to deliberately be onesided, also effects the fundamental fairness of the hearings and tribunal itself. **(See Rosenberg @849)** Since the judge knew this to be improper and repeatedly admitted it, doesn't this rise to the level of lending ones

authority to the aid of a litigant and doesn't this also rise to the level of corrupt activity necessary to support concerted actions of the defendants? Again the courts seem reluctant to address these issues for some reason unknown to the Petitioner. Corruption takes many forms and under **R12-(B)-6** and as per **Stern vs. U.S. Gypsum,** not only could the technical deficiencies be corrected, but it seems quite clear what any reasonable jury would have concluded based on the evidence that was and could have been presented. Doesn't a District Court Judge error by being unable to ensure the **R12-(B) (6)** standard is met and doesn't an Appeals Court error when it fails to reverse such an error?

5) ***Statutes private litigants must enforce:*** According to the **Texaco Case,** which relied on the Lugar decision, if there is some unusual circumstances to make the private party the state actor and not the state itself, then the private party is reachable **under Sec. 1983.** Here the Petitioner pointed out that the particular order of November 9, 1983 was required to be enforced by the private litigant and the state could only become involved if it was proven the state had jurisdiction to so become involved. Does the Lower Courts then error by saying the private party is not an actor under color of law when the statutes placed the burdens on the private litigant. This seems to be the same type of futile effort that the Petitioner was placed into by the violations of the statutes and results there after as described in the **Texaco Case (@1145[7]).** Again, the Lower Courts have errored and are refusing to apply the law appropriately. The Courts have seemed to take a hostile attitude toward this case and it seems hopeful that they will get rid of this case due to this PRO-SE's lack of expertise and thus he will make the mistakes that this Court will find appropriate to deny the petition. This then will resolve this case it feels is problamatic. Again, the Courts refuse to apply the laws properly to this case.

***Acting under Color of Law by acting with a private lititgant who is:*** Does a private party act under Color of Law when they act with a private litigant who is? The New Jersey Courts have ruled in the case of **State vs. Louf, 126 N. J. Super. 321, Aff. 64 N. J. 172,** that it is not necessary there be direct contact between all conspirators & in **State vs. Seaman, 114 N. J. Super. 19, Cert. Den. 92 S.Ct. 674,** that a conspiracy may be

proven by circumstantial evidence. Therefore, it would seem only logical that if there is a party who is acting under Color of Law, private or state, the party would in fact also so act. However, the Lower Courts have rejected this theory. Again, if this theory is correct, **The R12-(B) (6)** dismissal of the entire matter was improper.

6) ***Court Order on Individuals:*** Refering to the **Stump Decision @1105 & 1106,** the argument here is the same. If the state case law or statute can affect a judges jurisdiction, and an individual does not have the right to ignore, violate or willfully or recklessly disobey a court order, then does such a requirement affect an appointed official in the same fashion. If a court order is a legal document which can carry both criminal and civil sanctions for violating it, then it seems logical that the **Stump Decision** would be applicable to say that the violator would not be acting in accordance with the terms of his state appointment and would lose immunity from prosecution under **Sec. 1983.** While the court order makes him a state actor for **Sec. 1983,** he would be liable if he violates the provisions of that order and ultimately affects the constitutional rights of the individual as well as affect–Due Process. The Due Process violation going to affect the fairness and impartiality of the hearing by failing to evaluate and render a report on the children and then giving testimony as to his belief as to what and who is causing the children's problems. This is especially critical here since the failure to evaluate was admitted to create, by the experts own method of practice, a situation which yields totally erronious conclusions and opinions. Here not only has Due Process and a constitutional right been affected by the violation of the court order, but the Courts have rejected this hybrid of the **Stump Decision.** Case laws and statutes are legally binding orders on the people they can affect, so to is a court order. If it is not, then we may as well throw away the courts, the rules and the legislature because we will have reduced our system to one of men rather than that of laws for which we boast. **(See 51 Lw 5030)** Laws are made as a means of protecting society and to establish a form of behavior that we as a society can accept. This is why we place civil and criminal sanctions with them. If this standard is correct, even though the Lower Courts either rejected it or prevented it from being presented, the dismissal of the entire

case would be in error again due to the failure to ensure the safeguards built into **R12-(B) (6)** were met.

7) ***Sua-sponte Motion to Consolidate:*** Is it error for a judge to consolidate a set of complex cases into one when the case law standard would indicate they are in fact three separate cases with separate issues. In **Haefner vs. Co. of Lancaster, Pa. Et Als, 543 F.2D 264,** it was held that Res Judicata only works on cases where the issues are the same or could have been presented in the original complaint. The issue of the love and affection of the Petitioners children and the loss of child support and immediate attorney fees are not the same as sanctions by a judge, loss of his interest in his house, loss of or interference with religious freedom, a wage execution and fees to the defendant Mrs. Reardon especially since they occured long after the original law suit and could not therefore have been raised in that suit. This is also in light of the criteria in the **Texaco Case @1149[14])** where at least the 2nd criteria could not have been met since the Petitioner was deprived, by the defendants actions, from appealing the matter in the state. There is also the fact that since the original order was being challenged and was foreclosed on by the rejection of the appeal, then as far as the 3rd criteria **(ID @1149)** this could not be met either. Thus the Federal Court also errored regarding their right to issue an injunction and/or temporary restraining order. It would also be error on the part of the Lower Courts to have permitted this single judge to hear any matter since the injunctive request, which is one of the matters that was before the Court on February 1, 1985 was required by statute to be heard by a three judge panel. Again the Courts have departed or allowed a departure from the normal scheme of things. There is no question a judge has a general right to consolidate cases. However, the judge must always keep in mind the particulars of the case. He may not consolidate cases if prejudice may occur as a result. The Petitioner, even if the original case was deficient in allegations, had corrected those deficiencies in the second and third complaint including the possible deficiency regarding the loss of immunity and loss of jurisdiction by the Defendant Judges. Thus the Lower Courts either settled the dispute or permitted it to be settled through **R12-(B) (6)** which is not permissable when the allegations were sufficient. Thus the consolidation has created,

unless reversed, irreperable injury and prejudice to the Petitioner.

8) ***Purpose of Rule 12-(B) (6):*** The Rules of Court are quite clear regarding this type of dismissal. Here the Lower Courts have ignored the criteria that A) It must be certain that there is no set of fact that could be presented to grant the relief requested; B) That a PRO-SE's statements must be taken as true; C) That all parties must be given notice and opportunity to be heard from on a Sua-sponte Motion to dismiss; D) Opportunity must be given to correct any technical deficiencies the Court feels exists; and E) Discovery must be granted in complex cases to ensure no injustice or injury is mistakenly created.

A) With all of the above arguments and requirement of **R12,** it is not sufficient to say there has been no claim for relief as the safeguards of the rule prevent this. The Petitioner stated all necessary allegations, and with reasonable inferences by the Court, **R12** was not proper for dismissing the entire matter. The judge could dismiss certain individuals he felt allegations were deficient on, but in light of the **"Complex Litigation"** Case he should have waited till discovery was completed. What has taken place here is that the Courts have focussed in on the conduct of the judges and parties rather than the loss of jurisdiction – which moots otherwise normal judicial conduct – and then once it has chosen that alternative, it dealt with the related issues of the private parties to the suit.

B) Given the above, and the fact that all necessary allegations were made, including those for liability of a judge, the ruling to dismiss by ignoring the allegations has violated and permitted to be violated the standard that all statements must be taken as true. This includes the allegation of conspiracy. **(Dennis vs. Sparks, Dykes vs. Hoseman)**

C) According to the case at **716 F. 2D 1109, 1112, Cert. Den. 53 Lw 3240,** when a judge intends to make a Sua-sponte Motion to dismiss, which was argued to the Appeals Court, he must give notice to all parties of his intent to do so, since none of the private defendants were there, the Courts have violated, and permitted to be violated, this standard. It should also be pointed out the District Court Judge applied this standard in an earlier proceeding but then abandoned it on February 1, 1985. The

possible rationale for this criteria is it goes to the question of Due Process to ensure it is not violated.

D) In **Stern vs. Gypsum** The court held that technical deficiencies must be permitted to be corrected. Here the Court felt such deficiencies existed but never gave the Petitioner opportunity to correct them. This can be shown from the transcripts of the hearings and the requirements under **R12** itself. That is to say if the Lower Court had accepted any arguments on February 1, 1985 the dismissal would automatically become Summary Judgement and the cases could not have been dismissed. Thus there has not only been a violation of this standard but it has been permitted to stand.

E) The Petitioner does not believe he needs to go into this area again, as the case of **"Complex Litigation"** and its intent is quite clear as to what it spells out and requires in such cases. It is clear the case required discovery to proceed and the Lower Courts have refused to allow this criteria to be applied to this case and permited the prejudice and irreparable injury that has resulted to stand and lie uncorrected.

9) ***Prejudice:*** **28 U.S.C. 455** is quite clear in its intent. Congress wanted to ensure that even the appearance of the courts were maintained. Thus when a judge has demonstrated a prejudice or prejudicial action towards an individual or group of individuals the law requires the judge to recuse himself and it also requires that all orders by said judge be overturned and remanded. While the Statute was not cited to the Third Circuit, the arguments presented clearly fell into the type that required a reversal of the District Court Order. **See Poludniak @954, and U.S. vs. Mims and 484 F. Supp. 13, 15)** the type of conduct presented is as follows:

A) Changing of standards always to the disadvantage of the Petitioner.

B) Has knowingly permitted every legal standard to be violated by manipulating the laws to satisfy his beliefs.

C) Showing and harboring deceitful conduct.

D) Violated Due Process.

E) Put the errors and responsibilities for said errors on the Petitioner when in fact they were created by the Court Personnel.

F) Has treated another PRO-SE individual, Mr. Gancy, in a

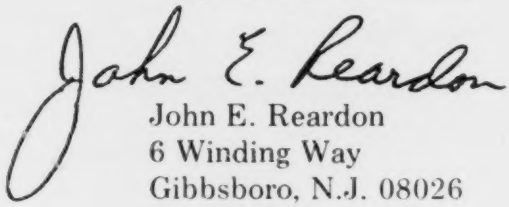
hostile manner. He thus bears an animus toward knowledgeable and/or aggressive PRO-SE individuals.
All of the above was pointed out to the Appeals Court and it too was ignored. The standard under the Statutes are quite clear and the consequences and effects on orders by such conduct is also quite clear.

If the above would require a recusal of a judge and would also require a reversal of all orders, then it must fairly be concluded that the Due Process rights of a fair and impartial tribunal and a fair and impartial hearing have also been violated, whether recusal is proper or not, and this would also require a reversal of the judges orders in the form of equity relief. This too was also ignored by the Lower Courts. Due Process is a right in every Court of Law and must be respected or the orders are subject to reversal.

## CONCLUSIONS

With all of the above in mind, and the fact that all issues either directly or indirectly have a bearing or effect on **R12-(B) (6)** dismissals, then the Courts have so far departed from the normal course of proceedings that this Court is rquired to review the matter. By the Lower Courts having violated or permitted to be violated or ignored almost every legal standard and precept of law it has failed to carry out the duties they were created for. The only possible conclusions are that this case brings to the Courts almost every legal issue and question that has not been clearly answered by this or any Court of Law. It also brings to the Courts a case which challenges the virtual integrity of an entire Co. Court System and the integrity of the state as well. The possible fear is that it will be opening "Pandora's Box" if this case is permitted to go to trial. A box that could have repercussive effects on every Court in the country.

Respectfully submitted,



John E. Reardon
6 Winding Way
Gibbsboro, N.J. 08026
(609) 783-6426

In the Supreme Court
of the United States
October Term, 1985

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John E. Reardon

Petitioner,

vs.

Virginia Reardon, Et Als

Respondants.

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Appendix A

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United States Court of Appeals
for the Third Circuit

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No. 85-5179

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John E. Reardon

v.

Virginia E. Reardon;
Vincent D. Segal, Esquire,
Segal & Tropp, and Robert W. Page
(D.C. Civil No. 84-3696)

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John E. Reardon

v.

John E. Wallace and Robert W. Page, Judges;
Richard Klein, Esquire, and Morgan Melnick;
Klein & Cetti; Virginia E. Reardon;
Vincent Segal and Segal & Tropp;
I.V. DiMartino and Edward F. Mennetti, Judges;
Camden County Courts; and the Attorney General of the
State of New Jersey
(D.C. Civil No. 84-5203)

John E. Reardon

v.

Virginia E. Reardon; Vincent Segal, Esquire,
Segal & Tropp; Edward F. Mennetti; I.V. DiMartino;
Camden County Courts; Attorney General, and
the State of New Jersey
(D.C. Civil No. 85-0097)

John E. Reardon,
Appellant

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Appeal from the United States District Court
for the District of New Jersey
District Judge: Honorable Stanley S. Brotman

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Submitted Pursuant to Third Circuit Rule 12(6)
December 3, 1985

Before: Becker, Stapleton, Circuit Judges, and
Van Dusen, Senior Circuit Judge

## JUDGMENT ORDER

After consideration of all contentions raised by appellant and for the reasons set forth in the opinion of Judge Brotman, it is adjudged and ordered that the judgement of the District Court be and is hereby affirmed.

Costs taxed against appellant.

By the Court

Circuit Judge

Attest:

Sally Mrvos,
Clerk

Dated: FEB 20 1986

In the Supreme Court
of the United States
October Term, 1985
No.

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John E. Reardon

Petitioner,

vs.

Virginia Reardon, Et Als.

Respondents.

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PROOF OF SERVICE

I, John E. Reardon, due certify that pursuant to Rule 28.4(A) of this court that a copy of this petition and all new and relevant material has been served on the respondents or their counsels by enclosing the appropriate material in an envelope and mailing it first class regular mail to the addresses of the respondents listed in the complaints submitted here as part of Appendix A, and that said material was deposited in the U.S. Mail at Gibbsboro, N.J. on June 24, 1986.

John E. Reardon

John E. Reardon, Petitioner